

## § 8301.107

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employment that involves the following:

(a) Law enforcement, investigation, security, firearms training, defensive tactics training, and protective services;

(b) Auditing, accounting, book-keeping, tax preparation, and other services involving the analysis, use, or interpretation of financial records;

(c) The practice of law, whether compensated or not; or

(d) Employment involving personnel, procurement, budget, computer, or equal employment opportunity services.

### § 8301.107 Additional rules for RD employees.

(a) *Application.* Except where otherwise noted below, this section applies to all of the Department's RD employees, other than special Government employees, as defined at 18 U.S.C. 202, including employees of the Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service.

(b) *Definition of RD program participant.* For purposes of this section, the phrase "RD program participant," includes any person (including any entity) who, either individually or collectively, currently has an outstanding loan, loan guaranty, or grant from RD, currently receives any other form of RD financial assistance under a credit, payment, or other program administered by RD, or has an application on file to become an RD borrower, RD grantee, or recipient of any other form of RD financial assistance available under any credit, payment or other program administered by RD. Voluntary membership by a person in a utility or public-type facility organization that is an RD program participant does not make the person an RD program participant.

(c) *Prohibited financial interests.* (1) Except as provided for in paragraph (c)(2) of this section, an RD employee, or a spouse or minor child of an RD employee, shall not knowingly own, receive, or acquire stock, or hold any other financial interest in a for-profit entity, or affiliate of a for-profit entity, that is an RD program participant, a business that does or seeks to do

business with RD, or one that sells repeatedly to RD borrowers or contractors for payment from RD loan, loan guaranty, or grant funds, if that entity or affiliate is affected by decisions of the particular RD office in which the RD employee serves. Types of entities covered by this section include, but are not limited to the following:

(i) Entities engaged in commercial real estate sales and leasing, including brokers, sales agents, mortgage lenders, and other financial servers;

(ii) Title and abstract companies;

(iii) House/building construction companies and subcontractors;

(iv) Building supply companies and lumberyards;

(v) Insurance companies; and

(vi) Entities involved in land development.

(2) *Exceptions.* (i) Nothing in this section prohibits an RD employee, or a spouse or minor child of an RD employee, from owning any of the interests described in paragraph (c)(1) of this section where the interest is held through investment in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund provided that the fund does not invest more than 5 percent of its assets in any one entity covered under paragraph (c)(1) of this section and does not invest more than 25 percent of its assets in any combination of entities covered under paragraph (c)(1) of this section.

(ii) Nothing in this section prohibits an RD employee, or a spouse or minor child of an RD employee, from owning Patronage Capital that the employee receives simply by reason of being a member of a nonprofit entity, such as an electric, telecommunications, or water cooperative. For purposes of this section, Patronage Capital is defined as amounts received for providing a service in excess of the amounts required for operating costs and expenses.

(d) *Prohibited real estate purchases.* Except in cases where a waiver has been granted pursuant to paragraph (g) of this section, no RD employee, or spouse or minor child of an RD employee may personally, or through the participation of another person, knowingly purchase real estate or personal property: Mortgaged or pledged to the

Government through RD; held in the RD inventory; for sale under forfeiture to RD; or from an RD program participant.

(e) *Prohibited transactions with RD program participants.* (1) Except in cases where a transaction is subject to the exceptions set forth in paragraph (e)(2) of this section, or where a waiver has been granted pursuant to paragraph (g) of this section, no RD employee or spouse or minor child of an RD employee, may knowingly: Purchase an interest in or sell real property to; lease real property to or from; sell to, lease to or from, or purchase personal property from; seek or accept credit from RD-financed cooperative associations; or employ for compensation a person whom the RD employee or spouse or minor child of the RD employee, knows or reasonably should know is an RD program participant directly affected by decisions of the particular RD office in which the RD employee serves.

(2) *Exceptions.* Paragraph (e)(1) of this section does not apply to a sale, lease, or purchase of personal property, if it involves goods available to the general public at posted prices that are customary and usual within the community.

(f) *Prohibited outside employment.* No RD employee may provide personal consulting services for any person or entity with an application on file with, grant from, or outstanding loan or loan guaranty with RD, if the application, grant, or outstanding loan or loan guaranty could be affected directly by decisions of the particular RD office in which the RD employee serves.

(g) *Waiver—(1) Approving officials.* A written request for an exception to the prohibitions found in paragraphs (d) and (e) of this section may be submitted in advance of the transaction by the RD employee (whether on his or her own behalf, or on behalf of the employee's own spouse or minor child) to:

(i) The RD State Director, for RD State-level employees; or

(ii) The Deputy Administrator for Operations and Management, for RD State Directors and National Office employees.

(2) *Standards.* The RD State Director or Deputy Administrator for Oper-

ations and Management may grant a written waiver from this prohibition based on a determination made with the concurrence of the USDA Office of Ethics that all three of the following conditions are satisfied:

(i) The waiver is not inconsistent with part 2635 of this title, this part, or 7 U.S.C. 1986, nor otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered;

(ii) The transaction:

(A) Appears free of duress or favoritism;

(B) Does not involve a contractual relationship or obligation that exceeds 365 consecutive calendar days; and

(C) Is in the best interests of the RD program participant; and

(iii) A denial of the request would likely cause significant hardship to the RD program participant.

(3) *Additional conditions.* A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification. Approval of a waiver under this paragraph does not exempt the employee from complying with other applicable programmatic requirements under 7 CFR part 3550.9.

(h) *Additional prior approval requirement for outside employment.* (1) Any RD employee wishing to engage in outside employment as defined in paragraph (b) of §8301.102 and who is not otherwise required to obtain approval therefor under that section, shall obtain prior written approval in accordance with the procedures set forth in paragraphs (c) and (d) of §8301.102 if the outside employment is covered under paragraph (h)(2) or paragraph (h)(3) of this section.

(2) Outside employment is subject to the prior approval requirement of this paragraph if it involves any of the following activities, if conducted in the area serviced by the RD office in which the employee serves:

(i) Sale, appraisal, or assessment of real estate;

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- (ii) Performance of real estate brokerage services;
- (iii) Service as a title attorney or title insurance representative;
- (iv) Real estate development, including the construction of houses or other buildings;
- (v) Service as an officer or on the board of directors of a bank or savings and loan association;
- (vi) Service as an officer, member of the board of directors or trustees, or as an employee of an RD-financed entity;
- (vii) Service as an officer, employee, or member of a governing board of a State, county, municipal, or other local political jurisdiction having the power to tax or zone real estate;

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- (viii) Membership in grazing associations, un-incorporated Economic Opportunity cooperatives, rental housing groups, and closely-held labor housing organizations;
  - (ix) Insurance sales; or
  - (x) Land speculation.
- (3) Outside employment is also subject to the prior approval requirements of this paragraph if it is with or for a person whom the RD employee knows, or reasonably should know, is both:
- (i) An RD program participant; and
  - (ii) Directly affected by decisions made by the particular RD office in which the RD employee serves.

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